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JUL 28 2010

OFFICE OF PETITIONS

In re Application of  
David Zahner  
Application No. 10/062,588  
Filed: July 5, 2001  
Attorney Docket No. 4042.025

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: DECISION DISMISSING PETITION  
: UNDER 37 CFR 1.78(a)(3)  
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This is a decision on the petition under 37 CFR 1.78(a)(3), filed May 24, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional Applications.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The amendment as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment does not comply with 37 CFR 1.121(b)(1)(ii). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made.

Before the petition can be granted, petitioner must submit a substitute amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3).<sup>1</sup>

The issue fee in this case was paid on May 24, 2010. Therefore, it is conceivable that the application will issue before either the filing or the granting of a renewed petition under 37 C.F.R. §1.78(a)(3). In such case, submission of a certificate of correction (along with the \$100 fee and the \$130 processing fee) will be required as a condition for granting the petition under 37 C.F.R. §1.78(a)(3).

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to April M. Wise at (571) 272-1642. All other inquiries concerning this application should be directed to the Technology Center.

/dab/  
David Bucci  
Petitions Examiner  
Office of Petitions

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<sup>1</sup> The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).